LIBRARY
PREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 15 1970
JOHN F. DAVIS, CLERK

No. 887

In the Supreme Court of the United States

OCTOBER TERM, 1969

SALVADORE JOSEPH FERINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 887

SALVADORE JOSEPH FERINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Mississippi, petitioner and two others were convicted of aiding and abetting one another to enter a federally insured bank with intent to commit larceny (18 U.S.C. 2, 2113(a)). Petitioner was sentenced to seven years' imprisonment. The court of appeals affirmed in a thorough opinion on which we principally rely (Pet. App. 34–45).

Petitioner's sole contention relates to the propriety of his arrest by a State officer and the seizure of two billfolds from the interior of his automobile incidental to that arrest. As recounted in detail in the opinion

372-983—70——1

below, the pertinent events took place in the early morning hours near Mantachie, Mississippi, where two deputy sheriffs and a State patrolman had set up a roadblock while investigating a report that youngsters were exploding fireworks on a nearby property. While he was guarding several cars until the other officers returned from pursuing an automobile which had fled from the roadblock, Deputy Hendricks saw petitioner, a stranger in the vicinity, walk across the highway toward a parked car with Alabama license plates. Hendricks testified that he started walking toward petitioner in order to have him identify and explain himself in relation to the fireworks incidents which had occurred. Petitioner got into his car and began to back away. Hendricks called on him to stop and, when he did not, the deputy pulled out his revolver, ran alongside the car, and ordered petitioner to stop. Petitioner did so. The deputy then asked petitioner for his driver's license. Petitioner was unable to produce his license and stated that he did not have any identification with him. He was then arrested. When the officers shined a flashlight into the car they saw two billfolds in plain view, which later were shown to belong to petitioner's co-defendants. These billfolds which, in addition to other evidence, connected petitioner to the robbers, were introduced at trial.

Without disputing the reasonableness of the deputy's actions, petitioner nevertheless contends that the original detention—*i.e.*, the stop at gunpoint—was unlawful. He first argues that the detention was unlawful under Mississippi law and that, even if Missis-

sippi law did not affirmatively prohibit the deputy's actions here, the principles of *Terry* v. *Ohio,* 392 U.S. 1, do not govern this case because Mississippi, unlike Ohio, has not acted to clothe law enforcement officers with explicit authority to make "stops" on less than probable cause to arrest.

Petitioner points to no Mississippi decision which denies law enforcement officers the authority briefly to detain individuals, on suspicion less than probable cause, for the limited purpose of on-the-scene questioning to determine their identity and the reason for their presence.[1] Consequently, as the court below implicitly held, there is no reason to suppose that Mississippi courts would deny the existence of such power (commonly exercised by police forces throughout the country), and thus no occasion to consider the question which would be presented had Mississippi undertaken affirmatively to prohibit the kind of police action involved here. Cf. *United States* v. *Di Re,* 332 U.S. 581; *Ker* v. *California,* 374 U.S. 23, 37–39. In *Terry* v. *Ohio, supra,* the State had not by statute authorized its officers to make "stops" and "frisks". This Court, however, treated the question of the legality of such action, absent a State prohibition, as a question of federal constitutional law under the

[1] Petitioner's reliance (Pet. 11) on *Morgan* v. *Town of Heidelberg,* 246 Miss. 481, 150 So. 2d 512, for the proposition that the State officer here had no authority to ask for petitioner's driver's license is misplaced. On the contrary, that case held that the "mere act of stopping cars and detaining drivers momentarily to ascertain whether they are duly licensed does not constitute an arrest" (246 Miss. 487).

Fourth Amendment, 392 U.S. at 16–22; see also *Elkins* v. *United States,* 364 U.S. 206, 223–224. Accordingly, the court below was amply warranted in concluding that the initial "stop" of petitioner under the circumstances of this case met the test of reasonableness and that the rationale of *Terry* applied to justify the ultimate seizure of the billfolds and their introduction into evidence.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

U. S. GOVERNMENT PRINTING OFFICE: 1970